

The Administrative Law Judge denied claimant's request for disability benefits on the basis claimant failed to prove he was disabled for a period of at least one week from earning full wages at his employment. Claimant requested that the Appeals Board review that finding.

Claimant also requested that the Appeals Board decide the nature and extent of claimant's disability. However, that issue was not reached by the Administrative Law Judge. Therefore, should the Appeals Board decide the first issue in claimant's favor, then the matter should be remanded to the Administrative Law Judge for a determination of the issues that were not reached in the original Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

Claimant alleges he is entitled to disability benefits for injuries he received to his low back on February 20, 1992, when moving a 55-gallon drum of oil.

Claimant continued to work for respondent immediately after the accident. The Appeals Board notes claimant modified his work duties to accommodate his injury and resulting restrictions.

As a result of the February 20, 1992, accident, claimant did not miss one week of work. Although he received ongoing medical care and was required to participate in physical therapy, he continued to work. Because of the demands of production, claimant's supervisors asked claimant to reschedule his doctors' appointments so he would not miss work. Claimant was able to do this until August 1996 when he moved from the night shift to the day shift. Except for medical treatment, claimant did not miss work due to his injury. The total amount of time claimant missed from work for medical treatment was at most 15 hours. This does not constitute one week as required by K.S.A. 1991 Supp. 44-501(c).

The Appeals Board finds claimant is not entitled to receive any permanent partial disability benefits because the accident did not disable claimant from earning full wages for at least one week as required by K.S.A. 1991 Supp. 44-501(c). The statute provides in pertinent part:

Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

Because of the above findings, the remaining issues are rendered moot. The Appeals Board hereby adopts the findings and conclusions set forth by the Administrative Law Judge in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bryce D. Benedict, dated April 10, 1997, should be, and is, hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

We respectfully dissent from the majority's interpretation of K.S.A. 1991 Supp. 44-501(c). The phrase "disable the employee for a period of at least one week from earning full wages" should be interpreted as meaning either that compensation is limited to medical benefits unless the disability prevents the employee from working for a full one-week period or, that compensation is limited to medical benefits unless for any one-week period the employee misses work due to the injury and, therefore, does not earn a full week's wages. We would find the latter.

In this case, claimant spent many hours traveling to and receiving medical treatment, including physical therapy, and he will likely continue to require medical treatment in the future. However, most of this treatment was scheduled, at his employer's request, at times which did not require claimant to miss work. Claimant normally worked the third shift and, therefore, was able to accommodate his work schedule in this regard. However, after August 1996 claimant moved to the day shift and thereafter began missing

work to receive the necessary medical treatment. Because claimant missed work as a result of the February 20, 1992, accident, he was disabled from earning full wages for those weeks when he missed work. Furthermore, claimant had to change to a less physically demanding job in order to accommodate his restrictions and continue working. Thus, claimant was disabled from the work at which he was employed at the time of his injury. As such, the provisions of K.S.A. 1991 Supp. 44-501 do not preclude claimant from receiving permanent partial disability benefits.

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
 Mark E. Kolich, Kansas City, KS
 Jeff K. Cooper, Topeka, KS
 Bryce D. Benedict, Administrative Law Judge
 Philip S. Harness, Director